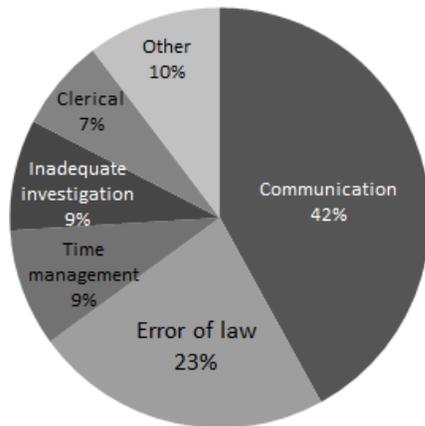


### Quick stats\*

Average **174 claims** per year  
 Average cost: **\$3.9 million** per year  
 Average cost per claim **\$22,100**  
**#4** claims area of law by count  
**#5** claims area of law by cost  
 Longest claim reporting time: **59 years**

### Common errors



Given the stress and emotions involved in their matters, family law clients can be among the most difficult to deal with. Many have unrealistic expectations regarding the process, timing, costs, and potential outcomes of their matters. You can significantly reduce your claims exposure by confirming in writing the information your client provides to you, your advice to the client, the client's instructions to you, and what steps were taken on those instructions.

Failure to know or apply the law is **twice** as likely to occur in family law than in other areas of practice. It is one of the most complex practice areas involving dozens of federal and provincial statutes and voluminous case law. You should be aware of the limitations in your legal knowledge and expertise. You may want to engage another lawyer who has expertise in estate planning or tax issues; an accountant or actuary may be needed to help with a pension or business valuations, stocks or stock options, bonds; or an appraiser to deal with assets such as antiques.

You can substantially reduce your risk with clear lawyer/client communications and ensuring you know the relevant law. See the reverse for more steps that can be taken to reduce exposure to a family law claim.

### Speakers and resource materials

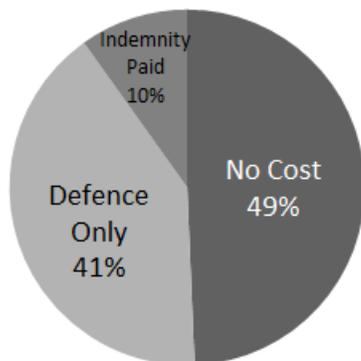
Visit [practicepro.ca](http://practicepro.ca) for resources including the Domestic Contracts Toolkit, the Limited Scope Retainers Resources page, LAWPRO Magazine articles and other checklists, precedents, practice aids.

LAWPRO can provide knowledgeable speakers who can address claims prevention topics. Email [practicepro@lawpro.ca](mailto:practicepro@lawpro.ca)

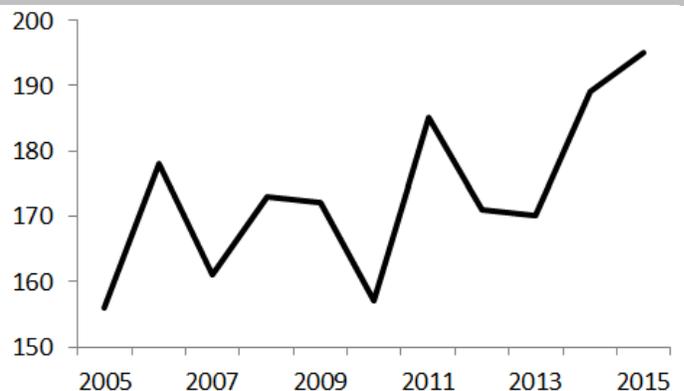
### Hot topics in family law claims

In the last five years, 1 in 5 LAWPRO claims involved a domestic contract, and 1 in 5 involved an allegation of an improvident settlement. On these two types of claims, almost half resulted from communications-related errors and 21% were due to a failure to know or apply the law.

### Resolution of claims



### Count of family law claims



## Risk management tips

### Proactively direct and control client expectations

Family law clients can be emotional and difficult to manage. They may also have changing and unrealistic expectations. This makes it especially important that you manage their expectations from the very start of the retainer. Helping clients avoid disappointment and surprises will significantly lower your claims exposure.

### Carefully explain agreement terms to clients

Carefully explain domestic contracts or settlement agreements so that clients cannot later allege that they did not understand the contents of these agreements.

### Be aware of the limitations of your legal knowledge

Family law is one of the most complex practice areas, with federal and provincial statutes and voluminous cases. No lawyer can hope to be an expert in all aspects of this field, so it's important to know when to seek advice from more specialized counsel (e.g. for estate planning) or third party experts (e.g. tax advisors, accountants, appraisers or actuaries).

### Consider not taking on a potentially difficult client

There may be cases where the client will never be satisfied. Lawyers involved in claims often tell LAWPRO that their instincts told them a client was going to be difficult. Have they changed lawyers several times? Do their demands seem unreasonable? Ask yourself if it's worth accepting the retainer.

### Make better use of checklists and reporting letters

LAWPRO's *Domestic Contract Matter Toolkit* ([practicePRO.ca/domestictoolkit](http://practicePRO.ca/domestictoolkit)) has checklists and forms that contain issues lawyers should consider as they conduct the interview on a domestic contract matter and when they meet with the client to review and sign the document. A final reporting letter detailing what you did and what advice you gave can be a great help in the event of a claim, which may arise long after you've forgotten the details of a particular file.

### Don't lower your standards for limited scope matters

A limited scope retainer does not mean less competent or lower quality legal services. Identify the discrete collection of tasks that can be undertaken on a competent basis and confirm the scope of the retainer in writing. Clearly document all work and communications. Recognize that unbundled legal services are not appropriate for all lawyers, all clients, or all legal problems. Sample retainers and checklists can be found on the Limited Scope Representation Resources page on the practicePRO website.

## Most common malpractice errors

### Lawyer/client communication errors (42%)

- Failing to ensure the client understands the potential consequences of excluding certain property from an equalization calculation in a marriage contract
- Failing to adequately explain the terms of a separation agreement, minutes of settlement, or that a settlement is final before the client is asked to sign
- In a limited-scope retainer, not communicating clearly what you are retained to do and what you are not going to do

### Errors of law (23%)

- Errors as to entitlement, amount or duration of spousal support
- Not complying with *Federal Child Support Guidelines* when arrangements are made for child support
- Unanticipated and unintended tax obligations

### Time Management (9%)

- Claim for spousal support is not made for a lengthy period of time, and ultimately an amount of support is lost because the court will not make a retroactive order
- Missed deadline for an equalization claim

### Inadequate discovery of facts or inadequate investigation (9%)

- Failing to properly identify all assets and liabilities for the purposes of preparing financial statements and making net family property calculations
- Failing to explore full facts and circumstances of a client's marriage so as to appreciate issues that need to be dealt with in a separation agreement or litigation

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